

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ALVIN R. SIMMONS, JR.,)
)
)
Plaintiff,) Civil Action No. 11-302
v.)
)
) Judge Cathy Bissoon
RENEWAL, INC., *et al.*,)
)
)
Defendants.)

MEMORANDUM ORDER

For the reasons that follow, Defendants' Motion to Dismiss (Doc. 16) will be granted.

Plaintiff alleges that, while he was present and/or residing at Renewal, Inc.'s facility, counselor Frank DeClar sexually harassed him and place his hands on Plaintiff's buttocks.

See Compl. (Doc. 6) at ¶ IV(C). On these allegations, Plaintiff purports to state claims under the 4th, 5th and 6th Amendments to the United States Constitution. *Id.* at ¶ III.

Assuming, *arguendo*, that Plaintiff can state viable claims under these or any other provision of the Constitution, the Court agrees with Defendants that he has failed to allege state action as required under 42 U.S.C. § 1983. *See Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 175-76 (3d Cir. 2010) ("To prevail on a § 1983 claim, a plaintiff must allege that the defendant acted under color of state law, in other words, that there was state action.") (citation omitted), *cert. denied*, -- U.S. --, 131 S. Ct. 1798 (U.S. 2011). There are no facts through which state action may be inferred, nor has Plaintiff offered any meaningful opposition to Defendants' Motion. *Compare* Pl.'s Opp'n Brs. (Docs. 25 & 26) (failing to respond to Defendants' substantive arguments for dismissal) *with Arango v. Winstead*, 2009 WL 3863335, *2 & n.1 (3d Cir. Nov. 19, 2009) (affirming dismissal with prejudice of

lawsuit because, despite plaintiff's having received notice of relevant legal issue and opportunity to respond, he failed to identify facts inferring constitutional violation).

For the reasons stated above, Defendants' Motion to Dismiss (**Doc. 16**) is **GRANTED**, and Plaintiff's lawsuit is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

February 29, 2012

s\Cathy Bissoon

Cathy Bissoon
United States District Judge

cc (via ECF email notification):

All Counsel of Record

cc (via First-Class U.S. Mail):

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